RESERVED

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

WRIT PETITION NO. 1172 of 2002 (MS)

Rajendra Prasad Pandey ..... Petitioner.

Vs.

Addl. Civil Judge (J.D.), Dehradun and another ..... Respondents.

.....

October 15, 2004

Sri Sharad Sharma, Senior Advocate, learned counsel for the petitioner.
Sri V.K. Kohli, Senior Advocate i/b Mr. Vinod Nautiyal, learned counsel for the respondent nos.2 and 3

Hon'ble Rajesh Tandon J.

This writ petition has been filed seeking a writ for quashing the order dated 26.10.2002 and 16.11.2002 passed by the Civil Judge (J.D.), Dehradun and District Judge, Dehradun.

Briefly stated the facts of the case are that the petitioner is the tenant in property bearing house no. C-161, Nehru Colony, District Dehradun since 1985 on a monthly rent of Rs. 450/- per month. The property was earlier owned by one Govind Singh Jalal and the petitioner is tenant in the said property from the time of Sri Jalal. The respondent no.1 purchased the said property from Sri Jalal and became owner of the property in dispute. Since the date of purchase of the property in dispute, they are making every effort to evict the petitioner from the property in dispute by adopting illegal and forceful method, therefore, the petitioner has filed suit no. 671 of 2000- Rajendra Prasad Pandey Vs.

Rajesh Bhandari and another in the Court of Civil Judge (S.D.), Dehradun for permanent injunction against the respondents. In the said suit the trial Court granted injunction in favour of the petitioner and the respondents were restrained from evicting the petitioner vide order dated 12.12.2000.

Counsel for the petitioner has submitted that on 16.10.2002, the respondent with the help of anti social elements, entered into the property in dispute and started collecting building materials on the site despite of protest on behalf of the petitioner. The petitioner has lodged a telegraphic complaint to Senior Superintendent of Police, Dehradun, but no action was taken by the police officers into the matter. Thereafter, it was submitted that on 17.10.2002 the respondent started raising constructions over the portion of open land, which is a part of accommodation in dispute and under the tenancy of the petitioner. The petitioner, therefore, has filed a suit no. 305 of 2002 in the Court of Civil Judge (J.D.), Dehradun for permanent injunction restraining the respondents from raising constructions over the property in question. The respondents filed their written statement. The Civil Judge (Junior Division), Dehradun after considering the matter, passed an order dated 16,10.2002 rejecting the application for temporary injunction filed on behalf of the petitioner on the ground that the respondents are raising construction over open land of premises no. C-161, Nehru Colony, Dehradun and they are legally entitled for raising constructions over the property in dispute.

Against the order of the Civil Judge (J.D.), the petitioner has filed an appeal before the District Judge,

Dehradun, who has confirmed the said order passed by the Civil Judge (J.D.), Dehradun. The respondent no.1 has also filed a S.C.C. suit no. 6 of 2001 Smt. Manju Bhndari Vs. Rajendra Prasad Pandey in the Court of JudgeSmall Cause Court for rent and ejectment on 12.2.2002. In the said suit, the property has been shown under the tenancy of the petitioner.

According to the petitioner, entire area of property no,161, Nehru Colony, District Dehradun is under the tenancy of the petitioner including the open land, and, therefore, the efforts of raising constructions over the land in dispute will amount dispossession of the petitioner from the property in dispute and as such the view taken by the trial Court as well as the appellate court rejecting the application of the petitioner was not justified. Petitioner has prayed for quashing the impugned orders.

The respondent no.1 has filed a counter affidavit stating therein that the petitioner has filed the present petition with frivolous grounds and he is actually harassing the respondent no. 1 and her husband, who is respondent no.2 in the present petition and creating every possible obstruction in finishing the construction raised on the open land of the plot in question. The construction work was about to be completed and the petitioner has brought the present suit and obtained ex parte injunction order which was subsequently rejected by the trial Court. The petitioner has challenged the said order in appeal, which was also rejected. Therefore, against these orders the present petition has been filed, which is liable to be dismissed.

In the case of Surya Dev Rai Vs. Ram Chander Rai reported in 2003 SCFB RC 512, the Apex Court after relying upon the judgment of Ganga Saran Vs. Civil Judge, Hapur, Ghaziabad and Ors : (1991) Allahabad Law Journal 159: 1991(1) ARC 231 (FB) has held as under:

> "34. We have carefully perused the Full Bench decision of the Allahabad High Court in Ganga Saran's case relied on by the learned counsel for the respondent and referred to in the impugned order of the High Court. We do not think that the decision of the Full Bench has been correctly read. Rather, vide para 11, the Full Bench has itself held that where the order of the Civil Court suffers from patent error of law and further causes manifest injustice to the party aggrieved then the same can be subjected to writ of certiorari. The full Bench added that every interlocutory order passed in a civil suit is not subject to reviewed under Article 226 of the Constitution but if it is found from the order impugned that fundamental principle of law has been violated and further such an order causes substantial in justice to the party aggrieved the jurisdiction of the High Court to issue a writ of certiorari is not precluded. However, the following sentence occurs in the judgment of the Full Bench:
>
> > 'Where an aggrieved party approaches the High Court under Article 226 of the Constitution against an order passed in Civil Suit refusing to issue injunction to a private individual who is not under statutory duty to perform public duty or vacating an order of injunction, the main relief is for issue of a writ of mandamus to a private individual and such a writ petition under Article 226 of the Constitution would not be maintainable.'.....
>
> 36. The above quoted sentence from Ganga Saran's case cannot be read torn out of the context. All that the Full Bench has said is that while exercising certiorari jurisdiction over a decision of the Court below refusing to issue an order of injunction, the High Court would not, while issuing a writ of certiorari also issue a mandamus against a private party. Article 227 of the Constitution has not been referred to by the Full Bench. Earlier in this judgment we have already pointed out the distinction between Article 226 and

Article 227 of the Constitution and we need not reiterate the same. In this context, we may quote the Constitution Bench decision in T.C.Basappa V. T. Nagappa and Anr. (1955) 1 SCR 250 and Province of Bimbay Vs. Klhushaldas S.Advani (dead) by Lrs. 1950 SCR 621, as also a three judge Benc decision in Dwaraka aNath Vs. Incom-tax Officer, Special Circle, D Ward, Kanpur and Anr.(1965) 3 SCR 536, which have held in no uncertain terms, as the law has always been, that a writ of certiorari is issued against the acts or proceedings of a judicial or quasi-judicial body conferred with power to determine questions affecting the rights of subject and obliged to act judicially. We are, therefore, of the opinion that the writ of certiorari is directed against the act, order of proceedings of the subordinate Courts, it can issue even if the list is between two private parties.

37. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:-

.....

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate Court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as if not corrected at that every momentum may become incapable of correction at a later stage and refusal to intervene or where such refusal itself would result in prolonging of the list.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a Court of appeal and indulge in re-

> appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.....

Relying upon the earlier judgment in the case of Surya Dev Rai Vs. Ram Chander, SCC 2003 Vol. 6 page 675, the Apex Court has held in the case of Ranjit Singh Vs. Ravi Prakash (2004) 3 Supreme Court Cases 682 as below:

> "In Surya Dev Rai Vs. Ram Chander Rai this Court has ruled that to be amenable to correction in certiorari jurisdiction, the error committed by the Court or authority on whose judgment the High Court was exercising jurisdiction, should be an error which is self-evident. An error, which needs to be established by lengthy and complicated arguments or by indulging in a long-drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution also, it has been held in Surya Devi Rai that the jurisdiction was not available to be exercised for indulging in re-appreciation or evaluation of evidence or correcting the errors in drawing inferences like a Court of appeal. The High Court has itself recorded in its judgment that- "considering the evidence on the record carefully" it was inclined not to sustain the judgment of the appellate Court. On its own showing, the High Court has acted like an appeal Court which was not permissible for it to do under Article 226 or 227 of the Constitution."

I have considered the facts and circumstances of the case and I find that the impugned order does not call for any interference. However, the Civil Judge (J.D.), Dehradun is directed to decide the suit no. 305 of 2002 within a period of three months from the date of filing certified copy of this

order. Any construction made shall be subject to the result of the suit.

Subject to above, the writ petition is dismissed.

(Rajesh Tandon, J.)

15.10.2004

A